

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors:	Glenna G. Mayo, et al.	Examiner: S. R. Pannala
Serial No.:	10/811,259	Group Art Unit: 2164
Filed:	March 26, 2004	Docket No.: 200310943-1
Title:	Access Point that Monitors Guest Usage	

REPLY APPEAL BRIEF UNDER 37 C.F.R. § 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed July 22, 2010, Appellants file this Reply Brief in accordance with 37 C.F.R. § 41.41.

AUTHORIZATION TO DEBIT ACCOUNT

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's deposit account no. 08-2025.

In order to justify combining Klug with Madsen, the examiner argues that “Madsen’s teachings would have allowed Klug’s method to provide a greatly improved response time of the wireless ...” (see Examiner Answer at p. 18). Further, in order to justify combining Klug with Kumhyr, the examiner argues that “Kumhyr’s teachings would have allowed Klug’s method to provide an improved strategy for allocating data objects stored on a server system ...” (see Examiner Answer at p. 18). Thus, the examiner argues that one skilled in the art would have combined the teachings in Klug, Madsen, and Kumhyr because these combined teachings would provide an improvement. These arguments are not consistent with the law.

Once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one several rationales. One of these rationales is “use of known technique to improve similar devices (methods, or products) in the same way” (see *KSR v. Teleflex*, 550 U.S. 398 (2007)). Thus, the Supreme Court expressly stated that improvement can be used to justify obviousness, but use of the known technique must be to improve **similar devices (methods, or products) in the same way**. The devices, methods, and products in Klug, Madsen, and Kumhyr are not similar per *KSR*.

The examiner relies on a user node in Klug to teach the web server interface recited in claim 1, and relies on a separate authentication system (not in the user node) to teach the usage collector recited in claim 1. The examiner then relies on a cache in a base station in Madsen to teach the web cache software recited in claim 1. The examiner further relies on a predictive storage algorithm executed on a server in Kumhyr to teach prefetching non-requested web pages. Thus, the examiner combines portions of a user node, with portions of an authentication system, with portions of a base station, with portions of a server to obviate the claims based on a rationale of improvement. The combination of these different and disparate devices is contrary to the express teachings in *KSR*: “use of known technique to improve similar devices (methods, or products) in the same way.” **The devices in relied on by the examiner in Klug, Madsen,**

and Kumhyr are not similar. A user node per Klug, an authentication system per Klug, a base station per Madsen, and a server per Kumhyr are all very different devices that function in very different ways.

As noted, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one several rationales. Appellants discuss examples of other rationale to show that there is no finding of obviousness.

As a first rationale, Appellants respectfully submit that no teaching or suggestion exists to make the combination because the references are directed to completely different inventions. Klug teaches users connecting to websites with browsers on a computer. Madsen teaches base stations that provide wireless access to and from remote users. Kumhyr teaches allocating data objects stored on a server system that uses a predictive storage algorithm.

As a second rationale, Klug, Madsen, and Kumhyr would have to be greatly modified to arrive at the claimed invention. Claim 1 recites that the access point is a single device. It would take a significant amount of modification to alter the user node in Klug, with the authentication system in Klug, with the base station in Madsen, with the server in Kuhhyr to arrive at a single access point as recited in claim 1. No suggestion is provided how these separate devices could be combined into a single access point as claimed.

As a third rationale, the differences between the claims and the applied references are great. Examples are discussed in the appeal brief with respect to different claim groups.

As a fourth rationale, the Examiner is performing an improper piecemeal construction that uses hindsight to arrive at the claim elements. In other words, the Examiner is picking and choosing unrelated and isolated sentences or teachings from Klug, Madsen, and Kumhyr with hindsight of Appellants' invention to allegedly obviate the pending claims. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

As a fifth rationale, no reasonable expectation of success has been established for modifying Klug with the teachings of Madsen and Kumhyr to arrive at the recitations of the claims. Klug, Madsen, and Kumhyr teach a multitude of different elements (user nodes, servers, authentication systems, and base stations) with very different hardware and software platforms. These elements perform different functions. These elements, functioning in different capacities, cannot simply be added together and expected to properly function.

As a sixth rationale, Appellant argues that no teaching or suggestion exists to make the combination because the references are directed to solving completely different problems. The backgrounds in Klug, Madsen, and Kumhyr all discuss different problems.

These various rationales show that elements in the claims are not obvious in view of the Klug, Madsen, and Kumhyr.

In the original appeal brief, separate arguments are presented for various claim groups in different sub-headings. These arguments are not reproduced here. Instead, Appellants respectfully ask the BPAI to consider the separate sub-headings and claims groups.

In view of the above, Appellants respectfully ask the BPAI to reverse the rejections of the examiner.

Respectfully submitted,

/Philip S. Lyren #40,709/

Philip S. Lyren
Reg. No. 40,709
Ph: 832-236-5529